

determined that marks would serve the public interest by enhancing product quality and safety, and provided legal protection to these marks under the Lanham Act. The federal law protects all four kinds of marks equally; specifically, 15 U.S.C. §1503 and 15 U.S.C. §1504 provide that service marks, collective marks, and certification marks "shall be entitled to the protection provided" to trademarks, except where Congress provides otherwise by statute.

The principle of equal treatment also applies to "no challenge" provisions in license agreements for the use of a trademark, service mark, collective mark, or certification mark. It is common for such agreements to include provisions under which licensees acknowledge the validity of and agree not to challenge the marks. By protecting the validity of the marks, these provisions reduce potential litigation costs for mark owners and protect the investment made by licensees. A long line of cases has upheld "no challenge" provisions in trademark licenses and dismissed validity challenges.

Unfortunately, the clarity of the Lanham Act on these points has been confused by a recent decision of the Second Circuit Court of Appeals in the case of *Idaho Potato Commission v. M&M Produce Farm and Sales*. That decision interpreted the Lanham Act as requiring that certification marks should be treated differently from trademarks with respect to "no challenge" provisions. The court mistakenly likened the public policy considerations surrounding certification marks to those surrounding patents.

This decision has raised great consternation among the holders of certification marks and their licenses throughout the United States—more than two dozen of whom joined in an amicus brief challenging the court's reasoning. Congress should be equally concerned, because this decision has the potential to undermine the Lanham Act and the certification mark system itself.

The legislation we are introducing today would not change current law, but would only underscore the policy that Congress clearly intended in the first place. We propose to add the words "rights and privileges" to the two sections of the law that I quoted above, which would clarify that registered service marks, collective marks, and certification marks are "entitled to the protections, rights, and privileges" provided to trademarks. While I have learned never to call legislation "simple," I would stress that at least our intention is simple: to reinstate the original intent of Congress and indicate our support of the view that these marks are to be given equal legal treatment.

I invite all my colleagues to review this legislation and consider the important public policy interests it would protect. It is not only the mark holders and licensees in your State, but all consumers across the nation who have

a stake in this bill, and I hope the Senate will act swiftly to approve it.

I ask unanimous consent the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2796

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. PROTECTIONS, RIGHTS, AND PRIVILEGES OF SERVICE MARKS, COLLECTIVE MARKS, AND CERTIFICATION MARKS.**

The Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (commonly referred to as the Trademark Act of 1946) is amended—

(1) in section 3 (15 U.S.C. 1053) in the first sentence, by striking "protection" and inserting "protections, rights, and privileges"; and

(2) in section 4 (15 U.S.C. 1054) in the first sentence, by striking "protection" and inserting "protections, rights, and privileges".

**SUBMITTED RESOLUTIONS**

**SENATE CONCURRENT RESOLUTION 136—HONORING AND MEMORIALIZING THE PASSENGERS AND CREW OF UNITED AIRLINES FLIGHT 93**

Mr. CONRAD (for himself and Mr. JEFFORDS) submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 136

Whereas on September 11, 2001, acts of war involving the hijacking of commercial airplanes were committed against the United States, killing and injuring thousands of innocent people;

Whereas 1 of the hijacked planes, United Airlines Flight 93, crashed in a field in Pennsylvania;

Whereas while Flight 93 was still in the air, the passengers and crew, through cellular phone conversations with loved ones on the ground, learned that other hijacked airplanes had been used to attack the United States;

Whereas during those phone conversations, several of the passengers indicated that there was an agreement among the passengers and crew to try to overpower the hijackers who had taken over Flight 93;

Whereas Congress established the National Commission on Terrorist Attacks Upon the United States (commonly referred to as "the 9-11 Commission") to study the September 11, 2001, attacks and how they occurred;

Whereas the 9-11 Commission concluded that "the nation owes a debt to the passengers of Flight 93. Their actions saved the lives of countless others, and may have saved either the U.S. Capitol or the White House from destruction."; and

Whereas the crash of Flight 93 resulted in the death of everyone on board: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That—*

(1) the United States owes the passengers and crew of United Airlines Flight 93 deep respect and gratitude for their decisive actions and efforts of bravery;

(2) the United States extends its condolences to the families and friends of the passengers and crew of Flight 93;

(3) not later than January 1, 2006, the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall determine a location in the United States Capitol Building (including the Capitol Visitor Center) that shall be named in honor of the passengers and crew of Flight 93, who saved the United States Capitol Building from destruction; and

(4) a memorial plaque shall be placed at the site of the determined location that states the purpose of the honor and the names of the passengers and crew of Flight 93 on whom the honor is bestowed.

Mr. CONRAD. Mr. President, I rise today to submit a concurrent resolution to honor the memory of the passengers on flight 93. This past weekend marked the third anniversary of the vicious and merciless attacks that took place on American soil on September 11, 2001.

As we reflect on those events and mourn the great loss we suffered, we remember the innocent who perished and we are reminded of the valiant efforts of those who saved lives, including the passengers and crew of flight 93. Those brave people gave up their lives in order to save others that fateful day.

In the last several months, the 9/11 Commission released its report about the series of events that took place on September 11, 2001. The Senate has subsequently undertaken an evaluation of the Commission's findings through a series of hearings. As the story continues to unfold, it becomes more clear how important the actions of the passengers and crew of flight 93 were. We now know that flight 93 was almost certainly headed to the U.S. Capitol or the White House. We also know the passengers of flight 93 learned through a series of phone calls to loved ones that hijackers on three other flights had turned airplanes into flying bombs that morning, crashing them into the World Trade Center and the Pentagon.

Armed only with that knowledge and their own courage and resolve, those brave passengers attacked the hijackers and forced them to crash flight 93 into rural Pennsylvania far short of its intended target.

The 9/11 Commission concluded that the Nation owes a debt to the passengers of flight 93. Their actions saved the lives of countless others and may have saved either the U.S. Capitol or the White House from destruction.

Those of us who work here in the Capitol owe a special debt of gratitude to those heroes. Their actions saved one of the greatest symbols of our democracy. Had flight 93 reached its intended target, the dreadful day might have been even worse.

Today I am submitting a resolution honoring and memorializing the passengers and crew of United Airlines flight 93. This legislation expresses our deepest respect and gratitude to them, as well as condolences to their families

and friends. This bill also calls for a location in the Capitol to be named in their memory and a commemorative plaque to be placed at that location.

Today I bow my head in memory of those who died at the World Trade Center and the Pentagon. I also pay respect to our first responders, volunteers, and average citizens who risked their lives to save others on that day.

Finally, I pay homage to the passengers and crew of flight 93 for taking on those who wished to harm our country and Nation's Capital. I believe it is appropriate at this time to acknowledge the actions of the passengers of flight 93 for showing such remarkable heroism and to commemorate them in the very walls that might have crumbled had they not made that ultimate sacrifice. We are forever indebted to them and should never forget their bravery or their sacrifice or that of their loved ones.

I hope my colleagues will join me in sponsoring this resolution. I have it at the desk and I am submitting it now. I hope on a broad bipartisan basis we are able to recognize those brave passengers and crew of flight 93 for what they did on that remarkable day.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3621. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill H.R. 4567, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

SA 3622. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 2709, to provide for the reforestation of appropriate forest cover on forest land derived from the public domain, and for other purposes; which was referred to the Committee on Energy and Natural Resources.

SA 3623. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill H.R. 4567, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes; which was ordered to lie on the table.

SA 3624. Ms. MIKULSKI (for herself, Mrs. BOXER, Mrs. CLINTON, Mr. HARKIN, Mr. JEFFORDS, Mr. KENNEDY, Mr. LEVIN, Mr. SARBANES, and Mr. SCHUMER) proposed an amendment to the bill H.R. 4567, *supra*.

SA 3625. Mr. NELSON, of Nebraska proposed an amendment to the bill H.R. 4567, *supra*.

SA 3626. Mr. KENNEDY proposed an amendment to the bill H.R. 4567, *supra*.

SA 3627. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill H.R. 4567, *supra*; which was ordered to lie on the table.

SA 3628. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed by him to the bill H.R. 4567, *supra*; which was ordered to lie on the table.

SA 3629. Mr. DAYTON proposed an amendment to the bill H.R. 4567, *supra*.

#### TEXT OF AMENDMENTS

SA 3621. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill H.R. 4567, making appropriations for the Department of Home-

land Security for the fiscal year ending September 30, 2005, and for other purposes; as follows:

On page 39, between lines 5 and 6, insert the following:

SEC. 515. Of the amount appropriated by title II for the Office of the Under Secretary for Border and Transportation Security under the heading "AIR AND MARINE INTERDICTION, OPERATIONS, MAINTENANCE, AND PROCUREMENT", \$5,000,000 may be used for a pilot project to test interoperable communications between the first Northern Border Air Wing, Bellingham, Washington, and local law enforcement personnel.

SA 3622. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 2709, to provide for the reforestation of appropriate forest cover on forest land derived from the public domain, and for other purposes; which was referred to the Committee on Energy and Natural Resources; as follows:

At the end, add the following:

#### SEC. 6. BISCUIT FIRE RECOVERY PROJECT.

(a) JUDICIAL REVIEW.—The final environmental impact statement issued by the Forest Service and the Bureau of Land Management concerning the Biscuit Fire Recovery Project on the Rogue River-Siskiyou National Forest and the Grants Pass Resource Area (including the records of decision accompanying the final environmental impact statement) and any Federal action brought under the final environmental impact statement shall not be subject to judicial review by any court of the United States.

(b) TIMING.—Notwithstanding any other provision of law, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the activities authorized by the final environmental impact statement described in subsection (a) shall proceed immediately and to completion.

(c) EXEMPTION FROM APPLICABLE LAW.—The activities authorized by the final environmental impact statement described in subsection (a) shall not be subject to—

(1) the notice, comment, and appeal requirements of section 322 of Public Law No. 102-381 (16 U.S.C. 1612 note);

(2) administrative remedies under title 43, Code of Federal Regulations; or

(3) judicial review under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act").

(d) ATTORNEY'S COSTS, FEES, AND EXPENSES.—No costs, fees, or expenses of an attorney may be recovered in any civil action relating to the Biscuit Fire Recovery Project.

#### SEC. 7. KALMIOPSIS WILDERNESS ADDITION.

(a) DEFINITIONS.—In this section:

(1) MAP.—The term "map" means the map dated September \_\_\_, 2004, and entitled "Proposed Kalmiopsis Wilderness Addition-Rogue River-Siskiyou National Forest".

(2) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(b) DESIGNATION.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the approximately 64,000 acres of land in the Rogue River-Siskiyou National Forest in the State of Oregon, as generally depicted on the map, is—

(1) designated as wilderness and as a component of the National Wilderness Preservation System, to be known as the "Kalmiopsis Wilderness Addition"; and

(2) incorporated into, and to be managed as part of, the Kalmiopsis Wilderness.

(c) MAP AND BOUNDARY DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall—

(A) prepare a boundary description of the Kalmiopsis Wilderness Addition; and

(B) submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives the map and boundary description.

(2) PUBLIC AVAILABILITY.—The map and boundary description shall be on file and available for public inspection in the office of the Chief of the Forest Service.

(3) FORCE OF LAW.—The map and boundary description shall have the same force and effect as if included in this Act, except that the Secretary may correct minor errors in the map and the boundary description.

(d) ADMINISTRATION.—

(1) IN GENERAL.—Subject to valid existing rights in existence on the date of enactment of this Act, the Secretary shall administer the Kalmiopsis Wilderness Addition in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act.

(2) EFFECTIVE DATE OF WILDERNESS ACT.—With respect to the Kalmiopsis Wilderness Addition, any reference in the Wilderness Act (16 U.S.C. 1131 et seq.) to the effective date of that Act shall be deemed to be a reference to the date of the enactment of this Act.

SA 3623. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill H.R. 4567, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes; which was ordered to lie on the table; as follows:

On page 16, line 4, before the period at the end, insert the following: "Provided, further, That the budget for fiscal year 2006 that is submitted under section 1105(a) of title 31, United States Code, shall include an amount for the Coast Guard that is sufficient to fund delivery of a long-term maritime patrol aircraft capability that is consistent with the original procurement plan for the CN-235 aircraft beyond the three aircraft already funded in previous fiscal years".

SA 3624. Ms. MIKULSKI (for herself, Mrs. BOXER, Mrs. CLINTON, Mr. HARKIN, Mr. JEFFORDS, Mr. KENNEDY, Mr. LEVIN, Mr. SARBANES, and Mr. SCHUMER) proposed an amendment to the bill H.R. 4567, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes; as follows:

SEC. 515. The amount appropriated by title III for the Office of State and Local Government Coordination and Preparedness under the heading "FIREFIGHTER ASSISTANCE GRANTS" is hereby increased to \$900,000,000.

SA 3625. Mr. NELSON of Nebraska proposed an amendment to the bill H.R. 4567, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes; as follows:

On page 19, line 17, strike "\$2,845,081,000" and all that follows through line 22, and insert the following: "\$3,605,081,000, which shall be allocated as follows:

"(1) \$1,700,000,000 for formula-based grants, \$400,000,000 for law enforcement terrorism